

the non-disclosure to the individual of confidential information or by lack of opportunity to cross-examine confidential informants, the Hearing Officer shall take that fact into consideration. Possible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Hearing Officer.

(c) The Hearing Officer shall make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter and the significance which the Hearing Officer attaches to such valid allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Hearing Officer's opinion shall be predicated upon the Hearing Officer's findings of fact. If, after considering all the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Hearing Officer shall render a favorable opinion; otherwise, the Hearing Officer shall render an adverse opinion.

(e) The Office of Hearings and Appeals shall issue the opinion of the Hearing Officer within 30 calendar days of the receipt of the hearing transcript by the Hearing Officer, or the closing of the record, whichever is later, unless an extension is granted by the Director, Office of Hearings and Appeals. Copies of the Hearing Officer's opinion will be provided to the Office of Security Affairs, the Manager, the individual concerned and his counsel or other representatives, DOE Counsel, and any other party identified by the Hearing Officer. At that time, the individual shall also be notified of his right to request further review of his case pursuant to § 710.28.

(f) In the event the Hearing Officer's opinion is favorable to the individual, a copy of the administrative record in the case shall also be provided to the Office of Security Affairs. The Director, Office of Security Affairs will determine whether:

(1) To grant or reinstate the individual's access authorization, or

(2) To refer the case to the Director, Office of Hearings and Appeals, for further review.

(g) In the event the Hearing Officer's opinion is adverse to the individual, and the individual does not file a request for further review pursuant to § 710.28, a copy of the administrative record shall be provided to the Director, Office of Security Affairs, who shall make a final determination on the basis of the material contained in the administrative record.

**§ 710.28 Action on the Hearing Officer's opinion.**

(a) The Office of Security Affairs or the individual involved may file a request for review of the Hearing Officer's opinion issued under § 710.27 within 30 calendar days of receipt of the opinion. Any such request shall be filed with the Director, Office of Hearings and Appeals, and served on the other party.

(b) Within 15 calendar days after filing a request for review under this section, the party seeking review shall file a statement identifying the issues on which it wishes the Director, Office of Hearings and Appeals, to focus. A copy of such statement shall be served on the other party, who may file a response within 20 days of receipt of the statement.

(c) The Director, Office of Hearings and Appeals, may initiate an investigation of any statement contained in the request for review and utilize any relevant facts obtained by such investigation in conducting the review of the Hearing Officer's opinion. The Director, Office of Hearings and Appeals, may solicit and accept submissions from either the individual or the Office of Security Affairs, that are relevant to the review. The Director, Office of Hearings and Appeals, may establish appropriate time frames to allow for such responses. In reviewing the Hearing Officer's opinion, the Director, Office of Hearings and Appeals, may consider any other source of information that will advance the evaluation, provided that both parties are afforded an

opportunity to respond to all third person submissions. All information obtained under this section shall be made part of the administrative record.

(d) Within 45 days of the closing of the record, the Director, Office of Hearings and Appeals, shall make specific findings disposing of each substantial issue identified in a written statement in support of the request for review and the written response submitted by either the individual or the Office of Security Affairs, and shall predicate his opinion on the administrative record, including any new evidence that may have been submitted pursuant to § 710.29. If, after considering all the factors in light of the criteria set forth in this subpart, the Director, Office of Hearings and Appeals, is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Director, Office of Hearings and Appeals, shall render an opinion favorable to the individual; otherwise, the Director, Office of Hearings and Appeals, shall render an opinion adverse to the individual. The written opinion of the Director, Office of Hearings and Appeals, shall be provided to the Director, Office of Security Affairs, accompanied by the administrative record in the case. The Director, Office of Hearings and Appeals, shall notify the individual of the foregoing action.

(e) Within 30 calendar days of receipt of the opinion of the Director, Office of Hearings and Appeals, the Director, Office of Security Affairs, will make the final determination, based on a complete review of the record, whether access authorization shall be granted or denied, or reinstated or revoked. If, after considering all of the factors in light of the criteria set forth in this subpart, the Director, Office of Security Affairs, determines that it will not endanger the common defense and security and will be clearly consistent with the national interest, access authorization shall be granted to or reinstated for the individual; otherwise, the Director, Office of Security Affairs, shall determine that access authorization shall be denied to or revoked for the individual.

(f) The Director, Office of Security Affairs, shall, through the Director, Office of Safeguards and Security, inform the individual involved and his counsel or representative in writing of the final determination and provide a copy of the written opinion rendered by the Director, Office of Hearings and Appeals. Copies of the correspondence shall also be provided to the Director, Office of Hearings and Appeals, the Manager, DOE Counsel, and any other party. In the event of an adverse determination, the correspondence shall indicate the findings by the Director, Office of Security Affairs, with respect to each allegation contained in the notification letter.

#### **§ 710.29 New evidence.**

(a) In the event of the discovery of new evidence relevant to the allegations contained in the notification letter prior to final determination of the individual's eligibility for access authorization, such evidence shall be submitted by the offering party to the Director, Office of Safeguards and Security. DOE Counsel shall notify the individual of any new evidence submitted by DOE.

(b) The Director, Office of Safeguards and Security, shall:

(1) Refer the matter to the Hearing Officer appointed in the individual's case if the Hearing Officer has not yet issued an opinion. The Hearing Officer getting the application for the presentation of new evidence shall determine the appropriate form in which any new evidence, and the other party's response, shall be received, e.g., by testimony before the Hearing Officer, by deposition or by affidavit.

(2) In those cases where the Hearing Officer's opinion has been issued, the application for presentation of new evidence shall be referred to the Director, Office of Hearings and Appeals, or the Director, Office of Security Affairs, depending upon where the case resides. In the event that the Director, Office of Hearings and Appeals, or Director, Office of Security Affairs, determines that the new evidence should be received, he shall determine the form in which it, and the other party's response, shall be received.